



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE EO Examinations

1100 Commerce Street

Dallas, TX 75242

501-04-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: December 4, 2009

Release Number: **201013060**

Release Date: 4/2/10

LEGEND

ORG = ORGANIZATION NAME

XX = DATE

ADDRESS = ADDRESS

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Exemption under Section 501(c)(4)
of the Internal Revenue Code

Person to Contact/ID Number:

Contact Numbers:

Phone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

In a determination letter dated 03/12/20XX, you were held to be exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code (the Code).

Based on recent information received, we have determined you have not operated in accordance with the provisions of section 501(c)(4) of the Code. Accordingly, your exemption from Federal income tax is revoked effective 01/01/20XX. This is a final adverse determination letter with regard to your status under section 501(c)(4) of the Code.

We previously provided you a report of examination explaining why we believe revocation of your exempt status is necessary. At that time, we informed you of your right to contact the Taxpayer Advocate, as well as your appeal rights. On 05/15/20XX, you signed Form 6018-A, *Consent to Proposed Action*, agreeing to the revocation of your exempt status under section 501(c)(4) of the Code.

You are required to file Federal income tax returns for the tax period(s) shown above. If you have not yet filed these returns, please file them with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted, or unless an examiner's report for income tax liability was issued to you with other instructions. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal

Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in the United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:
Taxpayer Advocate Service

If you have any questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Sunita Lough
Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
1100 Commerce Street
Dallas, TX 75242

April 8, 2008

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Form 6018
Report of Examination
Envelope

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

LEGEND

ORG = Organization name XX = Date State = state River = river
CO-1, & CO-2 = 1st Company, 2nd Company ATT-1, ATT-2, ATT-3, ATT-4, ATT-5,
ATT-6, ATT-7 & ATT-8 = 1st ATTRACTION, 2nd ATTRACTION, 3rd ATTRACTION, 4th
ATTRACTION, 5th ATTRACTION, 6th ATTRACTION, 7th ATTRACTION & 8th ATTRACTION

ISSUE:

Whether ORG's (ORG) section 501(c)(4) exempt status should be revoked effective January 1, 20XX, because the ORG is organized for profit. and is not operated exclusively for social welfare purposes.

FACTS-ORGANIZATIONAL:

The ORG (ORG) was incorporated or formed on 11/12/19XX. The ORG applied for exempt status under Section 501(c)(7) as a social ORG on 11/19/01. The ORG received a determination letter granting them exempt status under Section 501(c)(4) on 3/12/20XX. The ORG's Form 1024, Application for Exempt Status states, "The organization formerly owned and operated a private nine hole golf course and ORG house/restaurant for its members only. A couple of years ago, however, the organization went through a change. Rather than focusing on its members, it became a community organization. It opened its golf course up to the public. As a part of this change, it entered into an agreement with ORG, State, to combine with the organization's nine holes of golf the nine holes of golf owned by ORG, State. Thus, the organization currently operates an 18 hole course that is open to the public. ORG requested the organization to operate the entire course. This is the only golf course near City, State. ORG requires that all green fees be used towards the maintenance of the 18 holes of golf. ORG regularly meets with the organization to provide suggestions as to how to make this course better for the general community..."

The ORG's most recent ARTICLE's OF INCORPORATION dated 3/31/20XX [and prior Articles] state the following:

Article III PURPOSES AND POWERS

The ORG was organized and continues as a non-profit country ORG for the purpose of owning and operating a golf course, a ORG house and other related recreational, dining and social facilities for the recreation and enjoyment of the ORG's duly qualified members. The ORG shall have the power to carry on all activities reasonably related or incidental to the operation of a golf and country ORG. No part of the net earnings of the ORG shall inure to the benefit of any member or individual. The ORG's powers shall include but shall not be limited to the following:

- (1) To construct, own, operate, and carry on a golf ORG for the use and enjoyment of its members and their guests, and to build, own, operate and maintain a golf course, a pro shop, a ORG storage facility and other related facilities, on its own or in conjunction with

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

other public or private entities as may be determined by the ORG's Board of Directors, for the use, pleasure and enjoyment of the ORG's member, their guests and the public.

(2) To construct, own, operate, and maintain a ORG house and other facilities as may be determined by the Board of Directors, including a restaurant, dining areas, dance floors or areas, refreshment stands, locker rooms, and other rooms, places or facilities, and to provide or conduct social, entertainment or amusement activities, for the convenience, health, comfort, and entertainment of the ORG's members and their guests;

Article VI (f) POWERS OF THE BOARD OF DIRECTORS

- (1) To make, alter or amend the Bylaws and ORG rules and provide penalties for infractions thereof by members; all bylaws made and enacted by the Board shall have full and final effect unless inconsistent with the laws of the State of State or the Constitution and Articles of Incorporation;
- (2) Prescribe the terms upon which persons may be accepted to membership in the ORG;
- (3) Accept or reject any application for membership;
- (4) Fix and prescribe classifications of members;
- (5) Determine and fix admission fees and dues;
- (6) Levy assessments against the members and provide for the collection of the same;
- (7) Approve the hiring of the ORG manager, the golf pro, the greens superintendent, and all other employees of the ORG, and approve all salaries of ORG employees;
- (8) Fine, reprimand, suspend or expel any member;
- (9) Remove for cause any director or officer....

Article IX MEMBERSHIP

- (a) Eligibility. Any person of good moral character, twenty-one years of age or over, shall be eligible for membership in the ORG, subject to the provisions of the Bylaws and rules of the ORG.
- (b) Application for Membership and Action Thereon. Matters relating to applications for membership and action thereon shall be as fixed in the Bylaws.

The ORG's BYLAWS dated 3/31/20XX [and prior bylaws] state the following:

Article I Section 1.1 Purposes. The ORG was formed and continues as a nonprofit country ORG for the purpose of owning and operating a golf course, ORG house and other related recreational, dining and social facilities in City, State for the enjoyment and recreation of its members.

Article II MEMBERS:

Section 2.1.1. Members....In the case of a membership owned by a corporation or other entity, such entity shall designate one individual who will be deemed the owner for purposes of use of ORG facilities and voting.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

Section 2.1.2. Equity Members. Equity Members are those members who have purchased an equity membership, have received a certificate of equity membership issued by the ORG, and whose equity membership has not been sold by the member or terminated by the ORG. Equity Members are entitled to vote, hold office, share in any liquidation proceeds, and sell, transfer or bequeath their membership in the ORG as permitted by these Bylaws.

Section 2.1.3. Non-Equity Members. Non-Equity Members are those members who have purchased a non-equity membership and whose non-equity membership has not been terminated by the ORG. Non-equity Members are not entitled to vote, hold office, share in any liquidation proceeds, or sell, transfer or bequeath their membership in the ORG.

Section 2.4 Admission Procedures. Membership in the ORG will be solely by invitation of the Board. A request that an invitation to membership be extended must be made in writing by at least one (1) voting Equity Member in good standing. All requests for invitations will be submitted to the Membership Committee of the Board for consideration and review. The Membership Committee will carefully examine all information and communications in reference to each candidate. Before each monthly Board meeting, the Membership Committee will submit to the Board members a list of individuals for whom an invitation for membership has been requested, together with its recommendation for action. All information regarding the candidates, as well as all action taken by the Membership Committee and the Board regarding such candidates will be kept confidential. The affirmative vote of four Board members will be required to admit a candidate. Should the nomination be unfavorably acted upon, it may not be submitted again for a period of one (1) year. It will be the duty of each Member of the ORG possessed of any negative information regarding the character of a candidate, or knowing of any good reason why membership should not be granted to such individual, to communicate the same to the Membership Committee. All such communications will be held by the Membership Committee in strictest confidence.

Section 2.6. Upgrade from Non-Equity Membership to Equity Membership. At the discretion of the Board, a Non-Equity Member may become an Equity Member by requesting such status and by paying as an initiation fee the difference between the fee paid by the Member at the time he or she became a Non-Equity Member and the then current initiation fee for an equity membership. [For 20XX, both the purchase of an Equity membership and the initiation fee for a Non-Equity membership were \$.]

Section 2.8. Voting Rights. ...Each Equity Member in good standing shall have one vote. Non-Equity Members shall not have voting rights. [In 20XX, the ORG had 127 equity members and 105 associate/non-equity members; both classes pay annual dues of \$ per person.]

Article XV DISSOLUTION

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

Section 15.1. Dissolution of the ORG. In the event that the ORG shall be dissolved, the Equity Members in good standing shall participate on a pro-rata basis in the distribution of the net assets of the ORG.

FACTS – OPERATIONAL:

Golf Course Open to Public

The ORG operates an 18 hole championship golf course under an arrangement with ORG, State. The County owns 9 holes and leases this to the ORG in exchange for the ORG managing and maintaining it along with their 9 holes, and keeping the entire 18 holes open to the public. The County requires the ORG to roll green fees from the golf course back into the course for operating expenses, maintenance and improvements. For 20XX, the County also appropriated \$ for capital improvements and equipment for the golf course.

Numerous golf tournaments are held on the golf course including fundraisers, state sponsored or sanctioned events, and company outings. All of the golf tournaments are open to the public as well as the ORG members. There are many people from out of the area that participate in the tournaments.

Members of the ORG and members of the general public all pay the same to play golf– whether it is a season pass or green fees.

Private ORG house – Members pay dues to patronize but also open to the public.

Facilities owned by the ORG include a restaurant and bar which is a private ORG house with a Class A liquor license as contemplated in Section 32A-5 of the State Code. The building also contains several large conference rooms not subject to the state private ORG rules.

Although the ORG house is a “private ORG” for purposes of the state liquor law, the ORG maintains that it is open to the public for practical purposes. The ORG actively seeks to book business meeting luncheons and corporate golf outing dinners with local and visiting companies and groups as well as company holiday parties, weddings, reunions, birthday gatherings, etc. The ORG meets and works with the Convention and Visitors Bureau and local hotels, rents billboards, and buys radio time to find bookings for the ORG house. The ORG explained that private ORG rules are followed by having a member of the ORG sponsor an event. Thus, the attendees are guests of that member. When an event is initiated by a non-member, they will ask one of their relatives or friends that is a member to sponsor the event. If it happens that there is non-member business, the person who is hosting the party must buy a temporary membership. [See section below on membership.]

Snack bar and pro-shop – Open to the public

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer	ORG	Year/Period Ended 20XX12, 20XX12

ORG property also includes a building housing a snack bar and pro-shop, open to the public. Beer, but not liquor, is served in the snack bar so it is not subject to the State private ORG rules. The snack bar business is owned and operated by the ORG. The pro-shop business is owned and operated by the general manager (GM) of the ORG who is also their golf professional.

Membership: Voting, Non-Voting and Temporary

There are three classes of membership: (1) equity members, who have purchased an equity membership, are entitled to vote, hold office, share in any liquidation proceeds, and sell, transfer, or bequeath their shares in the ORG, (2) non-equity members, who are not entitled to vote, hold office, share in any liquidation proceeds, or sell, transfer or bequeath their shares in the ORG and (3) temporary members, whose only benefit is the use of the ORG house. Equity and non-equity membership is only by invitation of the ORG.

For 20XX, the purchase of both an equity membership and the initiation fee for a non-equity membership was \$. Both classes pay annual dues of \$ per person. In 20XX, there were 127 equity (voting) members and 105 non-equity (non-voting) members. Upgrade from non-equity to equity membership is at the discretion of the Board. Since the equity and non-equity members pay the same dues and fees, it is not immediately apparent why the non-equity members are not allowed to vote. One possible explanation may be that the State State liquor law requires at least of the membership of a Class A liquor licensee have full voting rights [and an equal share in the equity of the ORG if it is a stock corporation]. The ORG has members with full voting rights. This arrangement will generate dues revenue from all "members" willing to pay dues while granting full voting membership only to the extent required by State law. This would allow for maximum revenue and minimum sacrifice of voting control and equity.

Regarding the temporary memberships, in actuality, very few are sold. Non-member/temporary dues in 20XX totaled \$. Regular membership dues totaled \$. Initially, the examining agent was told that a temporary membership costing \$ entitled the purchaser and guest(s) the use of the ORG house for two weeks. This amount was charged at the request of regular members because it approximates member's annual dues on a prorated basis. The members didn't think it was fair if they had to pay \$ per person; \$ per married couple to patronize the ORG house if a non-member could get in on a \$ visitor card. [Under state law, the \$ visitor card can be good for 3 weeks.] Per correspondence from the ORG's representative dated 3/13/20XX, "for the last several months they have three different types of non-member use of the restaurant. First, non-members are able to purchase a one month membership for the \$. Second, they can purchase a one day membership for \$. Third, and apparently the largest use, is that non-members are allowed to use the restaurant based upon being a guest of a member."

Membership dues, whether annual or temporary, do not entitle a member to use the golf course, only the restaurant and bar.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

Control of ORG

According to the Articles of Incorporation, control of the ORG rests with a board of seven directors who are elected by the members. The board determines who will be accepted as a member to the ORG and who will not. A prospective equity/voting member must be recommended to the board by a current equity member. An affirmative vote of four board members is required to admit a candidate.

The board meets with the County regularly regarding the management of the golf course, but manages the ORG house and membership in the ORG independently.

The area where the ORG is situated

The ORG is 1 of 5 golf courses in all of _____ covers a comparable geographic area and has 88 golf courses. The golf course winds along the River and is banked by sandstone and shale cliffs. It is located between the towns of City and City in ORG. The approximate population of City is _____ and City, the largest town in the county, _____. There are at least two hotels in City which have event facilities. The CO-1 advertises that it has meeting and banquet facilities for groups of 10 to 500. The CO-2 has two meeting rooms. The larger has a capacity of 200 and the smaller, 50. Per an internet source, ORG per capita income is approximately \$ _____ with _____ of the population below the poverty line. Largest industries are mining, government, and wholesale/ retail trade.

ORG terrain consists of mountain and desert. The area appears to be somewhat economically depressed, however many tourist attractions draw in additional commerce. City was once the hub of State's transportation and mining industries, and now nearly every building on Main Street is on the NATT-2. Other attractions in this area called "ATT-1" (unusual rock formations) include ATT-3, ATT-4, ATT-5, ATT-6 ATT-7, and ATT-8. There are hundreds of miles of mountain bike trails, trout fishing, hiking tours and camping.

FACTS – FINANCIAL:

The following two pages contain the ORG's financial statements. The ORGs allocates income and expenses to either the ORG house or the golf course.

Form 990		ORG house	Golf Course	Combined
	Revenue			
	Green Fees-ORG Members & General Public			
	Golf Season Passes - General Public			
	Driving Range Income			
	Riding Cart Rentals			
	Advertising Income – Bench Ads			
	Visitor cards - Temporary Membership ORG house			

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

Mineral lease income
Miscellaneous income
Collection charge returned cks
Line 2 Program Service Revenue

ORG house Member Golf Passes
ORG house Member Dues
Line 3 Membership Dues

Line 4 Interest Income
Sale of Fixed Assets
Line 8

ORG house - Food
ORG house - Minimum Charges
ORG house - Bev
ORG house - Liquor
ORG house - Beer
ORG house - Catering Deposits
Subtotal
Snack Bar - Food
Snack Bar - Beverages
Snack Bar - Beer
Subtotal

Line 10a Gross Sale of Inventory
Total Gross Receipts

Line 10b Cost of Goods Sold

Line 12 Total Revenue

Line 44 Total Expense

Line 18 Excess or (deficit)

Form 990	Expense	ORG house	Golf Course	Combined
	Groundskeeper Salary			
	Assistant Groundskeeper Salary			
	Assistant Golf Pro Salary			
	Grounds Labor			
	Salary - Driving Range			
	Starter's Salary			
	Marshalling			
	General Manager and Golf Pro Salary			
	Office Clerk and Office Manager Salary			
	Crew Labor			

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

Labor Snack Bar
 Janitor
 Line 26 Other Salaries and Wages
 Line 29 Payroll Taxes
 Line 31 Accounting Fees
 Line 32 Legal Fees
 Office Supplies
 Paper Supplies, Linens
 Janitor Supplies, Misc Supplies, Freight
 Kitchen Supplies, Uniforms, China/Silver,
 Gasoline & Lubricants
 Bar Supplies, Mistakes/Spills Liquor
 Line 33 Supplies
 Line 35 Postage and Shipping
 Line 37 Repairs & Maintenance - Bldgs & Equip
 Line 42 Depreciation
 Outside Labor
 Electric
 Phone
 Water
 Tax & license
 Property Taxes
 Insurance
 Employee ed,insure,bene,wkrmns comp
 Legal services
 Advertising
 BDay, dues/sub, entertain, cable, misc, bad cks
 Bank charges
 Line 43 Other Expenses
 Line 44 Total Expenses

LAW:

IRC, 2007-CODE-VOL, SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

501(c)(4)(A) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

501(c)(4)(B) Subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

The term "shareholder" includes a member of an organization. See *West Side Tennis Club v. Comm.*, 111 F. 2d 6 (2d Cir. 1940).

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

FINAL-REG, TAX-REGS, §1.501(c)(4)-1. Civic organizations and local associations of employees

Reg. §1.501(c)(4)-1 does not reflect P.L. 99-514, P.L. 100-203, P.L. 100-647, P.L. 101-73 or P.L. 104-168.

(a) Civic organizations

(1) In general. —A civic league or organization may be exempt as an organization described in section 501(c)(4) if:

- (i) It is not organized or operated for profit; and
- (ii) It is operated exclusively for the promotion of social welfare.

(2) Promotion of social welfare

(i) In general. —An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

(ii) Political or social activities. —The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

Revenue Ruling 64-313

The organization in question was incorporated under state law, without capital stock, as a nonprofit corporation. Its purpose is to maintain a registry for the wishes of members in regard to arrangements following death; to study and develop methods of achieving simplicity and dignity in funeral and memorial services; and to educate and inform its members and the public as to the results of such study.

Membership is available to any person who is in sympathy with the purposes of the organization on payment of a nominal membership fee. The income of the organization is derived from membership fees and donations. Its funds are expended for office rental, printing and supplies, secretarial help, and other miscellaneous expenses.

It is clear that the educational functions of the organization benefit the community as a whole by informing it of the problems involved in funeral arrangements. Furthermore, the maintenance of the registry is not similar to a business ordinarily carried on for profit, and in view of the nominal cost of membership and the non-exclusiveness of membership, this activity also serves a public purpose by facilitating the completion of decedents' funeral arrangements and the disposition of their remains in accordance with their wishes. Supplying information to members or their

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

representatives as to local funeral directors furnishing low cost funerals is incidental to and in furtherance of the organization's primary social welfare functions.

Revenue Ruling 67-109

A nonprofit corporation which operates a roller skating rink is exempt under section 501(c)(4). The roller skating rink is located in a county-owned building which is made available by the county government to the organization on a rent free basis. The income of the organization, which is derived from admissions, membership fees, and concessions operated in conjunction with the skating facilities, is used to defray operating expenses. Although the charges made are aimed at a break-even operation, any profit which the rink might realize is donated to the county for necessary improvements to the rink building. Membership in the organization, which qualifies one to vote for officers and directors at the annual meeting, and admission to the rink are open to all residents of the county upon payment of a nominal amount.

Revenue Ruling 66-273

An organization was formed to provide supervised facilities in a community for the development of good pistol, rifle, and shotgun marksmanship and for instruction in the safe handling and proper care of firearms. Membership is open to any citizen of the community of good moral character over 18 years old. Its receipts are derived from membership dues, range fees, and proceeds from the sale of ammunition and targets. Disbursements are made for the purchase of ammunition and targets, improvements to the range ground and buildings, expenses of special events, and miscellaneous operating expenses. The organization does not maintain a clubhouse. Social affairs are limited to an annual dinner for members, occasional picnics, and special events. None of the organization's income inures to the benefit of private individuals.

American Women Buyers Club, Inc. v. Commissioner, 238 F.2d 526 (2nd Cir. 1964)

The court affirmed denial of exemption to a membership corporation of female ready-to-wear buyers organized to promote the general good and welfare of members in the trade, encourage friendly relations, and give aid to members in distress. Membership, even within the trade, was restrictive as approximately 15% of the applicants were turned down. The services provided by the club (such as employment facilities, information about sources of supply, lectures, dinners, installations, publications, and sick and death benefits) were all primarily, if not exclusively, for the club membership.

Revenue Ruling 80-205

The Service ruled that it will not follow the decision in Eden Hall Farm v. United States, 389 F. Supp. 858 (W.D. PA 1975). This case held that an organization providing recreational facilities to the employees of selected corporations qualifies for exemption as a social welfare organization described in IRC 501(c)(4).

Revenue Ruling 69-385

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

A corporation was formed for the stated purpose of promoting the general welfare of the residents of a particular community. Membership in the corporation was available to those who owned property in a designated area. They paid an assessment based on the amount of property owned. Membership was transferable to successive purchasers of property owned by the original members. The corporate bylaws provide that any profits of the corporation shall be apportioned pro rata among the members according to the assessment originally paid. The corporation used the original assessments to purchase unimproved lots and some undeveloped land in the area. Over the years, the corporation sold on a sporadic basis some of the property and received substantial income from such sales. It derived additional income from the investment of the proceeds from the sales. The corporation improved and maintained nonresidential property and engaged in other activities for the benefit of all the residents of the area. On several occasions the corporation distributed profits to the members in accordance with its bylaws provisions. The corporation is authorized to make, and in fact made, distributions of profits to its members. These distributions are equivalent to dividends based upon equity ownership and result in profit to the members. It was held that the corporation does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code since the authority for making the distributions and the distributions themselves are incompatible with the requirements of the regulations that an organization must not be organized or operated for profit.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984) [CCH Dec. Link 40,960]
An organization operated bingo at a bar (a for-profit enterprise) for purposes of raising money for scholarships. The board of directors included the bar's owners and accountant, and two other persons. The court reasoned that, because the bar owners controlled the organization and appointed its directors, the organization's fundraising activities could be used to the advantage of the bar owners, and thus, provide them with a maximum private benefit. The organization claimed that it was independent because there was a separate accounting and that no payments were going to the bar. The court maintained that the organization's and the bar's activities were so interrelated as to be "functionally inseparable." A separate accounting did not change that fact. Thus, the organization did not operate exclusively for exempt purposes, but rather benefited private interests - the bar owners. Exemption was properly denied.

Revenue Ruling 74-298

A nonprofit organization was formed by local businessmen to provide recreation and entertainment for the citizens and visitors of the community. All residents of the community are eligible to become members of the organization upon payment of a nominal initiation fee and approval of a majority of the Board of Directors. The organization's sole activity is the sponsorship of an annual professional golf tournament that would otherwise not be available to the community. The tournament features nationally known competitors and receives nation-wide news coverage. The organization charges a standard admission fee to the public to attend the tournament. The organization's income is from gate receipts, membership fees, and assessments. Its disbursements are for prize money for the golfers, rental of a golf course, and miscellaneous administrative expenses. The ruling held that a professional golf tournament is an activity that

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

can be operated for profit, and the sponsorship of such a golf tournament can itself be a business for profit. The golf tournament sponsored by the organization is carried on with the general public and is operated in a manner similar to tournaments operated for profit. Accordingly, the organization is not operated primarily for the promotion of social welfare and, therefore, does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

In People's Educational Camp Society, Inc. v. Commissioner, 331 F.2d 923 (2nd Cir. 1964), a nonprofit corporation's social welfare activities were supported by its operation of a commercial resort. The court rejected the argument that the resort activities were social welfare and characterized them as business activities. It noted that a large portion of the revenue was being reinvested in the commercial operation. As the business activities were of such magnitude in comparison with the social welfare activities that the organization could not be said to be exclusively (that is, "primarily") engaged in the promotion of social welfare, the court held the organization nonexempt.

In Club Gaona, Inc. v. United States, 167 F. Supp. 741 (S.D. CA 1958), the organization's principal activity was the promotion of regular public dances, which were its main source of income. The club used these profits for speculative real estate dealings. The court held that the organization was not primarily promoting social welfare as its profits were devoted to the accumulation of funds which were not used for ascertainable civic projects.

GOVERNMENTS POSITION:

The ORG operates in several capacities:

- 1.) As a private ORG bar and restaurant in order to comply with the state liquor laws, to control membership and ownership, and for the benefit, pleasure and recreation of the members.
- 2.) Carrying on a business with the general public by actively seeking bookings for golf tournaments, banquets, other events and daily business.
- 3.) Managing and operating a County owned 9 hole golf course in conjunction with their own 9 hole course to provide recreation for the community and for ORG members.

During the course of this examination, there has been a good deal of discussion and fact finding in an attempt to determine whether the ORG is organized and operated as required under IRC 501(c)(4). i.e. Are the Articles and Bylaws consistent with IRC 501(c)(4)? What is the primary activity and is it in furtherance of social welfare purposes? Relevant facts and circumstances are as follows.

Social and recreational activities for members and activities similar to those carried on by a business operated for profit are present to a substantial degree. Functions for members in the ORG house and member golf leagues are not IRC 501(c)(4) activities. They are social and recreational activities for members. Also, operating a bar, restaurant, banquet facilities, renting out meeting rooms, and even hosting golf tournaments [R.R. 74-298] are activities similar to

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

those carried on by a business operated for profit and are not IRC 501(c)(4) activities. However, these activities do not preclude exemption provided they do not comprise the primary activity of the organization.

Factors such as the remote location of the golf course, the economically depressed area, the community's need for recreation, and the golf course being available at the same cost to the general public and ORG members, are indicative that the golf course may be operated for the benefit of the community. The ORG has suggested that the arrangement they have with the County and the support they receive from them shows that they qualify under IRC 501(c)(4).

The examining agent suggests that the "arrangement" is a management contract and the "support" is compensation under that contract; i.e. capital acquisition funds [9 holes are ORG property], additional revenues generated by the draw of having an 18 hole course suitable for tournaments, and additional revenues from being open to the public. The County's purpose was to provide a golf course open to the community. To achieve this, they contracted with a privately owned golf course [the ORG] to manage and operate it. The ORG did not apply for exempt status until a couple of years later. Nevertheless, without regard to the private ownership of the ORG, operation of a public golf course can qualify as a 501(c)(4) activity provided other facts and circumstances are consistent with IRC 501(c)(4). The examining agent will continue with the government's position allowing the presumption that the 18 hole golf course activity is considered to be an activity of the ORG and an activity described in IRC 501(c)(4). Returning to the determination of the primary activity of the ORG; one method of determining the primary activity is a gross receipts test. Initially, the examining agent used the ORG's allocation of receipts on their financial statements for the gross receipts test which resulted in the ORG house having of gross receipts. However, the ORG pointed out that this allocation was flawed because receipts from riding cart rentals and the snack bar are related to the golf course. Thus, these receipts were moved to the golf course column as reflected in the schedule below. Gross receipts from the golf course activities, i.e. green fees, season passes, golf cart rentals, driving range income and snack bar income make up of total gross receipts.

	ORG house	Golf Course	Total
<u>ORG Financial Statements</u>			
Gross Receipts			
Cost of Goods Sold			
Total Revenue			
Total Expense			
Excess or (Deficit)			
 Riding cart rentals			
Snack Bar receipts			

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

Reallocation

Gross Receipts

Cost of goods sold

Total Revenue

Labor snack bar

Total Expense

Excess or (Deficit)

The gross receipts test shows the golf course activity to be the primary activity and there are factors supporting that the golf course is operated for the benefit of the community. Additional facts and circumstances relevant in determining qualification for exempt status are as follows.

The examining agent feels it is important to point out that the riding cart rentals and snack bar income are not required by the County to be rolled back into the golf course. [Not that this would necessarily prevent funds from benefiting equity members as they own half of the 18 hole course.] These receipts may be disbursed as deemed necessary by the ORG board. In fact, the ORG financial statements allocate all of these receipts to the ORG house. Regardless, the excess from general public patronage benefits ORG members in such forms as an increase in services offered by the ORG without a corresponding increase in dues or other fees and as an increase in the ORG's assets which are distributable to equity members upon the dissolution of the ORG.

Equity membership in the ORG is exclusive; limited by the Board. Equity members are given access to the ORG house, the right to vote, hold office, and share in the net assets of the ORG upon dissolution. Non-equity members pay the same dues and fees and only receive access to the ORG house. They are not allowed to vote, hold office, or share in the net assets of the ORG upon dissolution. An organization that is operated for the benefit of the community should be open to all persons in the community with full voting rights and equal dues for equal rights. The exclusivity of membership is inconsistent with IRC 501(c)(4) purposes.

The ORG has stated that the ORG house itself provides social welfare activities because it has meeting rooms which provide a place for "various charities and other public gatherings" and that the bar and restaurant is not just for members but, open to the public, for all practical purposes. The examining agent contends that the activities are not social welfare activities. There are other bars, restaurants, event centers, banquet facilities, and a convention center, in the area. These are business activities carried on with the general public and operated for profit. However, it is not the operation of the ORG house as a business activity [or social activity for members] that precludes exemption. The ORG house does not appear to be the primary activity. The problem is the private ownership of the ORG house along with the limited membership. Revenues treated as tax exempt are inuring to private individuals.

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer	ORG	Year/Period Ended 20XX12, 20XX12

The Articles and Bylaws are not consistent with and in furtherance of IRC 501(c)(4) purposes. They state "In the event that the ORG shall be dissolved; the Equity Members in good standing shall participate on a pro-rata basis in the distribution of the net assets of the ORG." The net earnings of a 501(c)(4) organization must be devoted exclusively to charitable, recreational, or educational activities. The ORG's dissolution clause which provides for the distribution of net assets to its members is not consistent with exemption under IRC 501(c)(4). [R.R. 69-385]

The organizing documents do state that the ORG was organized as a non-profit country ORG and that no part of the net earnings shall inure to the benefit of any member or individual. However, this declaration is contradicted when these same documents also authorize the issuance of certificates of equity, which are certificates of stock representing ownership in the corporation, and dedicate the assets to the owners/members of the corporation.

The ORG states that it is the net assets of the ORG that will be shared by the members and that IRC 501(c)(4) only requires that no net earnings inure to the benefit of any private shareholder or individual. The examining agent argues that for purposes of the prohibition against inurement, these terms are indistinguishable and interchangeable. Both the net assets and the net earnings of an IRC 501(c)(4) organization are protected by this prohibition. The ORG is organized so that equity members will participate on a pro-rata basis in the distribution of the net assets upon dissolution. This is a fatal flaw in the ORG's organizing documents.

TAXPAYER'S POSITION:

[Letter dated 12/28/20XX] The report basically ignores the fact that substantially all of the activities and funds of the Golf Course are devoted to maintenance and operation of the public golf course which provides needed recreational activities to the general public and is of the type that ORG clearly recognizes and supports. In addition to the larger capital acquisition payments, ORG contributes indirectly to the operations of the golf course. This results from the County making the additional nine holes of golf available for use with no charge. Thus, the golf course is able to use the green fees generated by this free use of the County's property for the operation of the golf course as a whole. All such green fees, as well as all golf passes sold to members and non-members must be used for the care, maintenance, and operation of the golf course. The vast majority of such green fees are paid from the general public users or from public tournaments. In addition to the use of the County's portion of the golf course, the County contributed last year about \$ for golf course capital acquisitions. Given these two forms of contributions, there is no doubt but that the operation of the golf course is furthering one of the purposes of the County.

A "de minimis" part of the Golf Course activities is the operation of the restaurant. The restaurant is owned and operated in the manner imposed upon it by the State of State as a result of its liquor license. These rules make it appear as if it is similar to other private ORGs. However, like most places in State that permit the sale of alcohol, the actual operation of the

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

ORG is radically different from a true private ORG. The public is able to and does use the restaurant. This is facilitated by the payment of a small three day fee, now being the minimum \$ fee set by the state of State. The requirement of a member sponsoring an event to be held at the restaurant by the public on paper also looks like a private ORG. Here again, the state of State requires a member to sponsor such an event. However, this is form over substance, since such member sponsorship has been and is available upon request. In addition, in the same building as the restaurant, there are several large conference rooms. These are fully available, without the minimum liquor license fee, for all types of community and other charitable uses and are frequently used for such purposes.

Proceeds from the golf cart rentals are used for golf cart repair, maintenance, and purchase of new replacement carts. This is not the profit center alleged in the report, especially since this "profit" only goes to improve the facilities used by the public.

Although Code Section 501(c)(4) may use stricter language, the regulations make it clear that all that is required for an entity to qualify under this section is that it be "primarily" engaged in promoting the common good and general welfare of the people of the community. Regs. 1.501(c)(4)-1(a)(2)(i). Given the large percentage of funds and time devoted to the golf course, it is clear that this is the primary focus. There is no question that ORG clearly believes that the operation of a golf course is for the common good and general welfare of its citizens. This is the only golf course in ORG and ORG not only owns a portion of the course in question, but also regularly contributes substantially towards the cost of capital improvements. It is also clear that the golf course is available to the general public.

Although the report recognizes the obvious desire of the County to provide this type of recreation to its citizens, it suggests that this for some reason is not the type of social welfare addressed in Section 501(c)(4). The providing of recreation by governmental entities is common place and clearly is a governmental function. The fact that an economically strapped county, such as ORG, desires to make this type of capital resource available for recreation is proof that the golf course operation satisfies the social welfare requirement.

The report asserts the finding in a case which benefits a small group of apartment renters as reason why the golf course is not for the public benefit. There is no comparison between these two. There is not a select group that benefit from the golf course as there was in the apartment case. Every citizen is able to enjoy the benefit of this course. Clearly, this is a public and not a private benefit and the comparison to an apartment complex is completely incorrect. The lack of benefit to the members is additional evidence of the public purpose of the golf course.

The report also focuses on the restaurant as preventing satisfaction of the "primarily" engaged requirement. The report is wrong on three points. The activity and cost of operating the restaurant pales in comparison to the operation of the golf course. Second, the restaurant, for a small fee required by the state of State, is available to the public. Third, a portion of the

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

restaurant itself provides social welfare. It provides a place for various charities and other public gatherings. In this economically strapped county, the ability for a large public group to gather satisfies a public welfare requirement. Although the state of State dictated liquor laws place some technical road blocks for such public gatherings, these have and continue to not be anything more than technical. For example, member sponsoring is required, but freely given to all. Such activities are very similar to those involved in Rev. Rul. 65-195, which found a social welfare activity to be present in conducting community sports contests.

We believe that the regulations and case law provide that once the public welfare benefit is established, minor profit activities do not destroy its qualifying under Section 501(c)(4). Although the court found that the primary activity of the taxpayer in People's Educational Camp Society, Inc. v. Comr. was the providing of for profit management services, the court indicated that had this been a secondary activity, the taxpayer would still qualify under Section 501(c)(4).

Similarly, see TAM 9815061, where the entire activity was a for profit activity. This distinction is best found, however, in TAM 97110004. Here a number of subordinate organizations were found to have as their "predominant activity" the commercial operations of a bar and restaurant. However, the parent company that oversaw such subordinate organization as well as other charitable organizations remained qualified since this commercial activity was not the primary or principal activity of the parent company. In short, the existence of minor non public welfare activity does not destroy the qualification.

Here, it is only a minor activity that is arguably a for profit activity. By far and away the vast majority of the activity is the operation of the public golf course. It is this activity that should control.

PRIOR APPROVAL: Even if the primary purpose of the golf course is ignored and hence the golf course is denied 501(c)(4) status, such change cannot be done retroactively. The golf course obtained a determination letter from the IRS. Neither its organizational documents nor its operations have changed from those disclosed in the application for this determination. Thus, this is a re-determination of the same facts and one that must be done prospectively only.

[Letter dated 1/30/20XX] We still disagree on two basic points. First, the regulations do not prohibit all other activity, but only require that the organization be "primarily" engaged in promoting the common good and general welfare of the people of the community. Reg. 1.501(c)(4)-1(a)(2)(i). We believe that even if the areas you have focused upon do not fit squarely in this general welfare requirement, such activities are very minor compared to the real focus of the golf course operator.

Second, we disagree with your conclusion that the provision to distribute the assets of the golf course operator to its members results in the sharing in net profits. In fact, the organizational documents prohibit the sharing in the net profits. Instead, they require the distribution of the

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

remaining assets to the members if the entity ever dissolved. These two provisions are not in conflict since the net profits would be required to be distributed to a public charity and the initial capital (the land) distributed to the members.

[Letter dated 3/13/20XX] This is a follow up to our telephone conversation of about a week ago. [manager appeal conference] Attached is a summary of the financial income statement for the ORG. I have tried to allocate the income generated by the golf course versus that generated by the restaurant/ convention facility. It shows \$ of income being generated by the golf course as compared to \$ being generated by the restaurant/convention facility. It is difficult to make this same allocation based upon expenses since many of the upper level employees jobs are divided between the two activities.

With respect to the restaurant, management confirmed that for the last several months they have three different types of non-member use of the restaurant. First, non-members are able to purchase a one month membership for the \$. Second, they can purchase a one day membership for \$ (the minimum permitted by the state of State). Third, and apparently the largest use, is that non-members are allowed to use the restaurant based upon being a guest of a member. This last option is used the most and on a very liberal basis. Thus, any time there is any possibility that a non-member can attach himself or herself to a member, then no fee is charged. The reason being is that the restaurant needs more customers and hence they have an incentive to permit non-members use of it.

I had the ORG take a count of member versus non-member use of the restaurant over the time period from February 26 to March 8th 20XX. During this time, there were 29 members who used the restaurant and 180 non-members who used the restaurant. According to the ORG management, this is a typical use ratio.

Given the non-member availability to use the restaurant and the actual use of the restaurant by non-members, it is obvious that there is no real value to the members and hence no inurement to them. Given the low or no cost to use the restaurant there is clearly no real value being given to the members.

I did some research on the issue of the land going to the members upon a dissolution and whether or not the unrecognized appreciation would be treated as "net income" for purposes of the prohibition against sharing in income. I was not able to find anything on point going either direction. The board of directors has no problem amending the bylaws so that to the extent income was used to improve the property that the value of such improvements would go to a 501(c)(3) charity upon any dissolution. However, as to the real property itself, I still believe that an entity should be able to distribute such an asset to members upon dissolution without violating the sharing in net income, whether or not there has been unrecognized appreciation.

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12, 20XX12

I also said that I would check on a modification of the bylaws so that both classes of stock were able to vote, rather than only the equity class having a right to vote. Because of the conflict between these two on a dissolution, the board of directors wanted to retain the right to have the equity class vote. Because ORG dictates how the golf course is to be run and maintained, the members have little power. For this reason, do not think that the voting disparity is all that important.

I believe the above covers those issues that were flushed out during our last telephone call. Hopefully, you will find that this supports my argument that the restaurant is either too immaterial to be concerned with or alternatively, that it provides a service for the community as a whole. If so, then the members are receiving no real advantage from the restaurant and it does not generate an inurement problem.

I like to try to compromise issues wherever possible, including those with the IRS. What I propose in this case is that the ORG retain its 501(c)(4) status, but that the restaurant is treated as an unrelated trade or business. I believe this fits with the facts since there is no real inurement to the members. Thus, to the extent it generates any income, there would be an UBIT. I realize that this compromise position cuts against by argument that the restaurant serves a community purpose since the conference rooms are used by the community as a whole. However, since such is basically free, the restaurant still generates the lion share of the income.

CONCLUSION:

IRC section 501(c)(4) provides that social welfare organizations must not be organized for profit and must be operated exclusively for the promotion of social welfare. IRC section 501(c)(4)(B) requires that no net earnings inure to the benefit of any private shareholder or individual with respect to such organization.

The ORG does not meet the organizational and operational requirements of IRC 501(c)(4) because it is owned by its stockholding/voting members, membership is limited, revenues generated by public patronage inure to the benefit of ORG members, and net assets are dedicated to ORG members upon dissolution.

Therefore, we propose revocation of the ORG's section 501(c)(4) exempt status retroactive to January 1, 20XX with consideration given to any request for IRC 7805(b) relief.